



COMMONWEALTH of VIRGINIA

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WAIVER OF 12VAC5-391-350(D): SUPERVISION FREQUENCY OF HOSPICE HOME ATTENDANTS

On March 12, 2020, Governor Ralph Northam declared a state of emergency due to novel coronavirus (COVID-19). In the declaration, Executive Order 51, the Governor directed state agencies to render appropriate assistance to prepare for and mitigate the effects of the COVID-19 outbreak. In doing so, he ordered authorization for the heads of executive branch agencies, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state requirement or regulation.

On March 13, 2020, President Donald Trump issued a proclamation declaring that the COVID-19 outbreak in the United States constitutes a national emergency under sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.). On that same day, pursuant to section 1135(b) of the Social Security Act (Act), the Secretary of the U.S. Department of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI in response to the COVID-19 pandemic to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the Medicare and Medicaid programs.

Pursuant to section 1135(b) of the Social Security Act, the U.S. Centers for Medicare and Medicaid Services issued a waiver to 42 C.F.R. § 418.76(h), which requires a nurse to conduct an onsite visit every two weeks including onsite visits to evaluate if hospice aides are providing care consistent with the care plan.

Requirement: Subsection D of 12VAC5-391-350 states, in relevant part, "The nurse responsible for supervising the home attendant shall make visits to the patient's home as frequently as necessary, but not less than every two weeks."

Waiver: Notwithstanding 12VAC5-391-350(D), the requirement for the nurse responsible for supervising a home attendant to conduct onsite supervisory visits every two weeks is suspended for the duration of the COVID-19 emergency declared by Executive Order 51, subject to the condition that the nurse responsible for supervising a home attendant conduct offsite supervision by telephone or video conferencing every two weeks.

Waiver: Supervision Frequency of Hospice Home Attendants

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Questions regarding this document or the information contained within should be addressed to the Director of the Office of Licensure and Certification, Robert A. K. Payne, JD, by email at Robert.Payne@vdh.virginia.gov or by phone at (804) 367-2102.

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